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FEB 15 1904

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 158.

THE NATIONAL MUTUAL BUILDING AND LOAN ASSOCIATION OF NEW YORK, *Plaintiff in Error*,

vs.

FRANK V. BRAHAM.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

R. C. BECKETT,
Of Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 9648.

(18,733.)

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STATEMENT AND BRIEF OF R. C. BECKETT, FOR DEFENDANT IN ERROR.

STATEMENT.

This is a case where a stockholder in and borrower from a building and loan association chartered by and under the laws of the State of New York paid up in full and then sued to recover back all except the principal, under the section 2348 of the Annotated Code of 1892 of the State of Mississippi, which section is in these words:

"2348 (1141). LEGAL RATE.—The legal rate of interest on all notes, accounts, and contracts shall be six per centum; but contracts may be made, in writing, for the payment of a rate of interest as great as ten per centum per annum.

And if a greater rate of interest than ten per centum shall be stipulated for, or received in any case, all interest shall be forfeited, and may be recovered back, whether the contract be executed or executory; but this section shall not apply to a building and loan association domiciled in this State, dealing only with its members."

The (1141) refers to that numbered section in the Code of 1880. Some of the pertinent references under this section 2348 are as follows:

"The penalty on a corporation for usury is, a statute not expressly providing a different rule, the same as that imposed on natural persons.

"Grand Gulf Bank *vs.* Archer, 8 Smed. & M., 151.

"Recitals in a contract on the subject of interest are not conclusive on the question of usury.

"Parchman *vs.* McKinney, 12 Smed. & M., 631.

"Nor does the form of the contract cut off the defense.

"McLaurin *vs.* Parker, 24 Miss., 509.

"Custom cannot change the statute.

"Wallace *vs.* Fouche, 27 Miss., 266.

"A stipulation for a greater rate of interest than allowed, whenever and however made, is usurious.

"Union National Bank *vs.* Fraser, 63 Miss., 231.

"Warmack *vs.* Boyd, 63 Miss., 488.

"Rozelle *vs.* Dickerson, 63 Miss., 538.

"One who pays usurious interest can recover it back by suit.

"Bond *vs.* Jones, 8 Smed. & M., 368.

"Parchman *vs.* McKinney, 12 Smed. & M., 631.

"O'Conner *vs.* Clopton, 60 Miss., 349.

"Warmack *vs.* Boyd, 63 Miss., 488.

"A promise to pay compound interest for future forbearance will not be enforced.

"Perkins *vs.* Coleman, 51 Miss., 298."

This Code of 1892, under sections 2 and 3, page 119, was to take effect on November 1, 1892.

In the first section of the act putting it into effect, Code of 1892, bottom of page 113, it is recited that it was prepared by the commissioners "and reported to the legislature by them, and adopted by the two houses of the legislature, the draft in duplicate whereof, as adopted, being now in the hands of the clerk of the house and secretary of the senate respectively, be, and the same is hereby adopted and declared to be the Code of Mississippi," &c.

NOTE.—This recital in the enacting part is copied in order to show that the annotations under the various sections were adopted by the legislature as well as the sections themselves, and that said annotations are not merely the ready reference notes of the compilers, but are a part of the Code itself.

There were two loans to the defendant in error, Brahan, one of $2,500, on May 21, 1892, and the other of $2,000, on August 30, 1894.

Record, pp. 2 and 3.

In the trial court the first was decided in favor of the defendant in that court, the plaintiff in error here, and the other in favor of the plaintiff in that court, the defendant in error here.

There was an appeal and a cross-appeal, and the case was affirmed on the appeal and reversed on the cross-appeal, but as there is no final judgment as to the latter, or loan of May 21, 1892, of course that part of the case can not be considered here. We call the attention of the court to this fact because the briefs of counsel and the opinion of the court of Mississippi refer to both, and we wish to keep this court from being misled.

On this writ of error only the loan of August 30, 1894, is involved. It was for $2,000, and in order to procure it the

plaintiff, Brahan, had to have twenty shares of the capital stock, or $100 of capital stock for each $100 borrowed.

William Gibson was the director of agencies and secretary and general manager, and familiar with all the rules and regulations of the association.

Record, pp. 37–38.

He explains all the rules and regulations under which the money was loaned. On each $100 borrowed the borrower was required to pay monthly dues of 60 cents and interest at the rate of 6 per cent., or 50 cents and a premium of 50 cents, or in the aggregate $1.60 on each $100, which was $19.20 a year on each $100, and which was at the rate of 19½ per cent. interest, if dues be counted as interest.

Record, pp. 50–52.

The first loan was made by Brahan, as above stated, on May 21, 1892, he receiving at the time 25 shares of the capital stock. He paid up this loan in full on November 15, 1893, and retained his 25 shares of stock.

Record, p. 57.

He withdrew five shares of his twenty-five shares of stock in October, 1894, leaving him with 20 shares still in force.

Record, pp. 45 and 58.

We have nothing to do with this first loan here, because the controversy over it was decided against the plaintiff, Brahan, in the trial court, and while that was reversed in the State supreme court on the cross-appeal, yet there has been no new trial and no disposition made of it, and hence, not being in final judgment, this court has no jurisdiction as to it and it is not before this court.

We refer to this only as a part of the history of the second loan, for the reason that the 20 shares were thus obtained by Brahan on May 21, 1892, instead of at the time of the loan,

as was the usual course, and it thus becomes a pertinent part of the case, because at the time Brahan settled up his second loan in full, on March 10, 1897, he was allowed five-sixths of the amounts he had paid as *dues* at 60 cents a month on each of these 20 shares for 58 months, or from May 21, 1892, to March 10, 1897.

Record, p. 55.

The settlement made by Brahan on March 10, 1897, of his $2,000 loan obtained on August 30, 1894, was as follows:

Amount paid on 20 shares for 58 months, at 60 cents per month per share, was $696, and five-sixths of this was $580. Interest for the average time, or one-half of 58 months, is 29 months, at 5 per cent. would make $70.08, or for a day or two over $70.70, which added to the $580 would make $650.70, and deducting one dollar withdrawal fee, would leave $649.70.

Record, p. 55.

He was charged with redemption fees, $10; interest for December, 1896, and January and February and to March 10, 1897, $36.66; premiums for the same time, $30; dues for the same time, $36; fines, $10, and notary fee, $1, making $123.66 for the three months and ten days, which added to the $2,000 principal of the loan, made $2,123.66, and this sum was credited by the withdrawal value above shown of $649.70, leaving $1,473.96 which he paid in cash.

Record, p. 57.

But this transaction did not take into account or make any allowance for the interest at 6 per cent., or 50 cents a month, or the premiums of 50 cents a month on each $100, which, of course, was equal to another 6 per cent., or at the rate of 12 per cent. for both, from the time of the loan, on August 30, 1894, to December 1, 1896, amounting to 27 months, at $20 per month, which made $540, and adding

the premiums and interest for said December, 1896, and January and February and to March 10, 1897, made $623.66.

Hence the actual transaction with Brahan was that he borrowed on August 30, 1894, the sum of $2,000 by check of the plaintiff in error on the Mercantile Trust Company of New York (Record, p. 42), and paid in actual cash interest at the rate of 6 per cent., or 50 cents per month on each $100, and fixed non-competitive premiums of 50 cents, or at the rate of 6 per cent., until the time of the final settlement, on March 10, 1897, in addition to the fines and withdrawal and redemption fees and other small items shown on page 57 of the Record. And this was according to the articles of association. (See Record, p. 33.)

Perhaps these latter items should be coördinated with the withdrawal of stock account, as they would have been required to have been paid anyway on the withdrawal of the installment stock, whether any loan was outstanding at the time or not.

In the settlement Brahan was allowed credit for $649.70 of the $696 which he had paid in on account of his 20 shares of installment stock at the rate of 60 cents per share per month since May 21, 1892. The amount of the credit was less than he had paid in. There were three classes or kinds of shares; the full paid shares, which were sold at 50 per cent. of their face value; the interest-bearing shares, which were sold at 70 per cent. of their face value, and the installment shares, which originated with and for a loan and were paid on at the rate of 60 cents per month per share. These latter, or borrowers' shares, were discriminated against and made to bear all the burdens of the association by a kind of false pretense, as I will endeavor to show in the brief later on.

I think that as a result of the foregoing statement this court can safely say that at the least what Brahan did actually agree to pay and did pay on account of his $2,000 loan was, in interest and fixed non-competitive premiums;

the sum of $623.66, or at the rate of 12 per cent. per annum, and this without the hazard of loss by the association or chance (I will not say hope) of gain by Brahan. Chances same as three-card monte. Hope, but no chance. The association had an agency in Meridian, Mississippi, and its agents there were authorized to receive and receipt for the interest, premiums, and dues. "Dues" were the 60 cents payments on shares (Record, pp. 32, 38). I wish here to call to the attention of this court the fact that the talk about the maturity of shares is apt to be misleading. There was supposed to be a time of maturity of the stock or shares, where no money was borrowed; but in case of a loan there was no such thing as maturity, in the sense of cessation of payment, until the full amount of the loan was paid, principal and interest. After eight years the premiums or excess of interest over 6 per cent. might stop, but even this was subject to repeal or alteration under article 19 of the articles of association, authorizing alterations and amendments; but the principal and the other 6 per cent. interest never ceased until the entire loan, principal and interest, was fully paid.

Record, pp. 32-33 and 35.

Also Mr. Gibson's testimony, Record, p. 51.

The contract was consummated in Meridian, Mississippi, in this, that the papers and the draft for the money were sent to the Meridian agents, with instructions for Brahan to execute the papers in Meridian, and for the agents to pay over to him the draft or money "on his being able to give a clear, unincumbered title to the property, and on the proper execution of the papers."

Record, p. 52.

The articles of association fixed no place of payment (Record, pp. 32-33), and all payments on account of this loan till the final settlement were made to these agents in Meridian.

Record, p. 50.

BRIEF.

There are three things which I propose to notice particularly in this brief:

First. The alleged advantages to the borrower which justified charging him interest or profit at the rate of 12 per cent.

Second. The alleged discrimination in favor of home associations.

Third. The argument in favor of "liberty of contract."

FIRST POINT.

Advantages to the Borrower.

It is practically certain that the lender stood no chance to lose, and hence opposite counsel could found no argument on the right to charge such an exorbitant profit because of the risk involved. Mr. Gibson, the general manager of the association, in his testimony, under the enticing questions of his counsel, frequently speaks of Brahan having enjoyed the advantages of the association and then trying to repudiate his contract.

Right here I wish to say that this fetching term "repudiation" has no application here, and so far as any allegation about the State impairing a contract is concerned, it is so manifestly without foundation that this court would have no jurisdiction under its repeated and emphatic declaration that the mere allegation of a Federal question will not do, but that there must be some real and substantial basis for

the claim. In this case Mr. Brahan paid up every dollar he owed the association and everything they claimed, including the Shakespearean or Baconian pound of flesh and the Biblical "uttermost farthing." If it had stopped there, no one could have complained of the scrupulous exactness of the compliance. It was completely executed. What the defendant in error did was to sue for the penalty for usury, the amount of which is measured by the excess of the payment over the principal of the loan. It is in the nature of a *qui tam* action, and the legislature could just as well have let the penalty enure to the informer; or whoever would sue for it, just as in *qui tam* actions.

In fact, in one of the annotations under section 2348 of the Code of 1892 (see statement *ante*) it is called "the penalty on a corporation for usury," &c., and from time immemorial it has been treated as a misdemeanor, and punished either by a forfeiture of the whole or excess of the interest charge or else by a separate penalty. The fact that the recovery is equal to the interest charge, and is therefore indefinite, amounts to nothing against it, for it is almost universal for the penalty for any offense to vary within certain bounds at the discretion of the judge, and the penalty for usury, from its very nature, is capable of being more equitably adjusted to the offense.

The real question here is whether the State has a right to prescribe a penalty for the act of usury committed within the State.

But, to return to the head of this subdivision, the advantages to the borrower that are claimed to justify the 12 per cent. interest charge. By turning to the articles of association it will be seen that they are very adroitly framed, and if there is anything in them to the advantage of the borrower, I have been unable to find it.

For instance, it reminds one of the old chestnut about the white man and the Indian going hunting and killing a turkey and a buzzard. When they went to divide, the

white man told the Indian that he would give him his choice; that he would either take the turkey and let the other take the buzzard, or the Indian could take the buzzard and he would take the turkey. The Indian remarked, "That looks mighty nice, but it's all the time turkey for the white man and buzzard for the Indian;" and so in this instance, it's all the time profit for the lender and burden for the borrower.

A person who bought and paid for his shares, only paid 50 per cent. on the dollar for them, and the man who bought interest-bearing shares only paid 70 per cent. on the dollar for them, and if either of them wished to withdraw, the one was paid back the full purchase price with interest at the rate of 6 per cent. for the first three years and 7 per cent. for the balance of the time, while the other was also paid back the full purchase price and interest at the rate of 6 per cent., or whatever was the contract rate.

Record, p. 31, s. 3 and 4, and p. 34, s. 2 and 3.

But how was it with the poor borrower on his installment shares? The way that was manipulated was as follows:

A person who desired to borrow was required to take a $100 share for each $100 he wished to borrow. On his loan he was required to pay interest at the rate of 6 per cent., and a premium of 50 cents on each share. Interest at 6 per cent. is $6 on the hundred, which is 50 cents a month, so that the interest and fixed premium amount to $1 per month, or $12 per year on the $100, and is therefore 12 per cent. interest.

Record, p. 33, sec. 2.

The dues on each share were 60 cents a month.

Record, p. 32, art. 10.

Now, the loan fund consisted of 50 cents of the monthly dues paid on each share, &c.

Record, p. 32, art. 12, sec. 1.

If there was 60 cents paid on each share, and only 50 cents placed in the loan fund, what became of the other 10 cents? It went to the expense fund.

Record, p. 35, art. 17, sec. 1.

By turning to this article it will be seen that this expense fund was made up of "ten cents per share of the monthly dues paid on installment shares, twelve and one-half cents per share per month on paid-up shares, and fifteen cents per month per share on the interest-bearing shares, and withdrawal, transfer and redemption fees."

This was evidently done to catch the unwary. If one should complain that 10 cents of his money was taken for expenses, the answer would be that expenses have to be paid; but look how we do it; we fix it so that the heaviest part falls on the paid-up and interest-bearing shares, those most able to bear it.

But who pays this 12½ and 15 cents? There may be some reason for dispute as to who pays the tariff tax, and the man who drew this article must have had that in mind, but it won't work. For instance, if a purchaser of paid-up or interest-bearing shares should draw out his "full purchase price, with interest at the rate of 6 per cent. or 7 per cent.," then who has to pay this 12½ and 15 cents? Of course, it is taken out of the loan fund put there by the borrowers, and any idea that it comes out of the lenders is a mere myth. When the borrower pays the 60 cents on his share, 50 cents of it is placed in this loan fund and the other 10 cents in the expense fund, and that is where the fact that when a borrowing member goes to withdraw they only pay him five-sixths of the amount paid in by him, as shown by the testimony of Mr. Gibson.

He first has to settle up his loan in full under section 3, article 12, of the charter (see Record, p. 33), by paying the principal, interest, premiums, and redemption fee, and having thus purged himself from the stain of an unholy bor-

rower, for no borrower can withdraw, that being confined exclusively to *unpledged shares* (Record, p. 34), they then pay him back the amount of dues paid by him into the *loan fund*. There are the unseen rocks against which he sails. They have only placed, as shown above, 50 of his 60 cents in this loan fund, and the other 10 cents has gone into the expense fund. So when he gets back what he has paid into the loan fund he only gets back 50 cents, or five-sixths of the total amount he has paid, and on a continuing payment, where a man is paid back only five-sixths of what he has paid in at any given time with an average interest of 6 per cent. (or 5 per cent., as was paid in this case, on the testimony of Mr. Gibson), there is no chance for him to get back what he paid in, much less any so-called average interest or any other kind of interest. In fact Mr. Gibson frankly states that the withdrawal value of the borrowers' stock is always less than the full value.

Record, pp. 54, 34.

This is also demonstrated by the fact that when Brahan withdrew his first five shares he had paid on them $84, and only got back $73.90, and when he withdrew the twenty shares now in controversy he had paid in, in the fifty-eight months and ten days, $696 and only got back $649.70. So if there is any advantage accruing to a borrower on account of his ownership of shares, I would like for some one to point it out.

SECOND POINT.

Discrimination in Favor of Home Companies.

It is true that the section 2348 of the Mississippi Code of 1892 provides that "this section shall not apply to a building and loan association domiciled in this State, dealing only with its own members." But the alleged discrimination

created by this provision is more apparent than real both in law and in fact. The domestic building and loan associations were, as a general thing, created by special acts of the legislature, and hence the range and limits of their powers and authority were contained in the charters themselves, and so far as they were concerned all the effect this provision had was to prevent any controversies as to whether a special act was repealed or modified by a general law, &c. The State supreme court, however, decided, contrary to the general impression, that building and loan associations could be organized under the general corporation law, and that it was not necessary to resort to a special act. And when we examine the general law we find that it has an express provision that "but the governor may require amendments or alterations to be made previous to signing the same, or, if deemed expedient by him, he may withhold his approval entirely;" and when the governor withheld his approval there was no remedy except an appeal to the legislature for a special act.

Code of 1892, sec. 833.

The charter has also to be passed by the attorney general of the State, and, as both he and the governor are elected by and responsible to the people, it is not likely that any charter that was oppressive to the people would be allowed to get through. And as a matter of fact I do not believe there is a single domestic building and loan association in active operation in the State. I think what few there are do not take new business, but keep up their organizations merely to wind up the old business. They are of comparatively recent origin. There seems to have been none in the State previous to about the last decade, as the first time they begin to appear in the Mississippi reports is the case of Sullivan *vs.* B. & L. Association in the 70 Miss., in 1892.

But even if there was a discrimination in their favor it would not be legal cause for complaint, as the State has a

right to prescribe on what terms foreign corporations shall do business in it. Some of the cases holding and illustrating this, with its limitations, are—

Farmer's, &c., Ins. Co. *vs.* Dobney, 189 U. S., 304–305.
Chattanooga Bldg. & L'n Ass'n *vs.* Denson, 189 U. S., 416.
Bedford *vs.* Eastern Bldg. & L'n Ass'n, 181 U. S., 241–242.
Cable *vs.* U. S. Life Ins. Co., 191 U. S., 288.

As this question, with the limitations mentioned in the last cited case, Cable *vs.* United States Life Insurance Company, 191 U. S., 288, is intimately connected with the subject of the next head, "Liberty of contract," we will argue them together under that title.

THIRD POINT.

Liberty of Contract.

As stated under the preceding head, discrimination and liberty of contract, in reference to contracts, are so intimately connected that they may well be argued together in this particular case. As there stated broadly, a State has the right to prescribe the conditions on which foreign corporations may do business in it. The limitations there hinted at are found in the case of Cable *vs.* United States Life Ins. Co., 191 U. S., on page 307. They are thus laid down:

"It has been held from an early day that a corporation created by one State could transact business in another State only on the consent, express or implied, of the latter State, and that such consent might be accompanied by such conditions as the latter State might think fit to impose, provided they were not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of

each State free from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense."

And the court then cites the line of previous decisions on that subject.

As to the constitutional provision that the "citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States," they, in another case, hold and reaffirm the doctrine that a corporation is not a citizen within this section, also citing the authorities.

Anglo-Am. Prov. Co. *vs.* Davis Prov. Co., 191 U. S., 374–375.

Does this case then fall within any of the limitations laid down in the Cable case, *ante?* An illustration of one of the limitations is found in the case of Bedford *vs.* Eastern Building & Loan Association, 181 U. S. (much relied on by opposite counsel), where this court simply holds that a State cannot pass a subsequent law to impair the obligation of a contract previously made. On January 2, 1891, Bedford applied for a loan, and his application was accepted on February 2, 1891, and the impairatory law, if I may use that expression, was passed on March 26, 1891, and, while the money had not then been paid over, this court held that as the transaction was so far advanced that a full compliance could be enforced by suit, therefore it was a vested right and protected from impairment (181 U. S. R., 239–240 and 241–242).

In reference to the defense of usury, the by-laws provided that "all payments should be made to the secretary of the association, at the home office, in registered letter, express, or money order or drafts;" and, while the members were permitted to forward payments through the local treasurer to the association at Syracuse, New York, it was expressly provided by the by-laws that "in so doing the local treasurer was acting as the agent for the stockholders, and not

for the association" (p. 229). The supreme court of Tennessee had held in the case of Pioneer, &c., Loan Co. *vs.* Cannon, 96 Tenn., 599, that as to a similar transaction by a Minnesota building and loan association, it was a Minnesota contract and valid and enforceable in Tennessee (181 U. S. R., 243), and this court say: "The business of the association in Tennessee had been lawful down to March 26, 1891, when the following act was passed," &c. (p. 233); and on page 236 it is said that there is no evidence that the association solicited stock subscriptions after March 26, 1891. The supreme court of Tennessee held in another Minnesota case that it was a Minnesota contract (p. 236), and I suppose in this case that it was a New York contract; but they further held that on account of this subsequent law of March 26, 1891, they were void and could not be enforced in Tennessee. The difference between that court and this court was, that court held the contracts inchoate and therefore subject to this subsequent law, while this court held that they were so far advanced as to confer vested rights which could not thus be impaired.

It does not anywhere appear in the statement of the case or in the opinion of the court that there was any plea of usury, but in answer to the claim that they were affected with usury the court say that they were payable in New York and were not usurious under the laws of New York, and they further show that they were not usurious under the laws of Tennessee existing at the time. As before stated, it is in the statement that the business was lawful at the time the contracts were made and had been so held by the supreme court of Tennessee, and then this court proceeds to show, in an independent opinion of its own, that they were not usurious under a former decision of its own in Spain *vs.* Hamilton, 1 Wall., 604, because the promise to pay a sum above legal interest depended upon a contingency and not upon the happening of a certain event (p. 242).

I have been thus particular in quoting the Bedford case because it is *the* case relied on by opposite counsel, and I wish to show that it is not applicable.

That contract was perfectly legal, both under the laws of New York and Tennessee, at the time it was made. It is not applicable, and certainly is no authority against our contention here that a State has a right to prohibit the transaction of a usurious business or one against its public policy within its domain. It would certainly present a humiliating spectacle if the State could establish an unobjectionable public policy, which its own citizens could not violate, and yet foreigners and strangers could come and set up an agency and violate it right under their eyes; and if a New York corporation could do it, for the same reason an English or other foreign corporation could do the same thing.

The proposition is that the State can prohibit the doing of a usurious business by the agents of a foreign corporation within its confines without any regard to how or where the results of it are payable. No such statute appears in the Bedford case, but the Mississippi statute on that subject is as follows:

"SECTION 849 (1042). OF FOREIGN CORPORATIONS.—Corporations which exist by the laws of any other State of the Union, by the acts of Congress, or the laws of any foreign country, may sue in this State by their corporate names, and they shall also be liable to be sued or proceeded against, by attachment or otherwise, as individual non-resident debtors may be sued or proceeded against. And the acts of the agents of any such foreign corporations shall have the same force and validity as the acts of agents of private persons; but such foreign corporations shall not do or commit any act in this State contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy."

The (1042) refers to that numbered section in the Code of 1880.

And such has been the law of Mississippi for many years. Code of 1871, section 2416, &c.

Now, here is a plain and positive declaration that the acts of the agents of foreign corporations shall be the acts of the corporations themselves, and that they shall not do or commit any act contrary to the laws or public policy, and if they do no recovery can be had. The papers were executed in Meridian, Mississippi, and delivered to the agents of the corporation there, and their draft or money was delivered to the borrower there, and the security was a trust deed on lands in Mississippi, a foreclosure of which necessarily had to be in and through the courts in Mississippi, and could not possibly be anywhere else, for no other court would have any jurisdiction over real estate situated in Mississippi.

Previous to this transaction the courts in Mississippi had established the doctrine that where an act resulting from a series of acts had to be traced through one which was illegal no recovery could be had on it.

For instance, if an agent took a note in this State for a slave which had been sold in violation of law, it would be void, though payable in another State.

Bank *vs.* Newberry, 41 Miss., 142.
Wooten *vs.* Miller, 7 Smed. & M. (15 Miss.), 380.

And so if any part of a transaction has to be traced through a usurious act.

Coulter *vs.* Robertson, 14 Smed. & M. (22 Miss.), 18.

And so if any material part of a contract is performed on Sunday.

Kountz *vs.* Price, 40 Miss., 341.
Miller *vs.* Lynch, 9 George (38 Miss.), 344.

And so if any part of a contract for cotton futures is transacted here, though the note is made payable in Liverpool.

Lemonius *vs.* Mayer, 71 Miss., 514.

An usurious contract made in Tennessee, secured by mortgage on lands in Mississippi, was allowed to be enforced here, because it was not usurious under the laws or public policy of Mississippi, and the judges mention that ground.

Kendrick *vs.* Kyle, 78 Miss.

This last decision, however, was made after the contract in question.

And so this court has refused to hold contracts legal which were made in violation of the express laws and public policy of a State, though they were made payable in New York. So held where Fowler and his wife executed a deed of trust to Jonathan Edwards, as trustee, to secure a loan from the Equitable Trust Company, a Connecticut corporation, though Fowler was a citizen of Illinois and the real estate was there, but the mortgage and notes were made payable at the office of the corporation in New York. That case seems to be almost an exact counterpart of this. The contract was held to be usurious.

Fowler *vs.* Equitable Trust Co., 141 U. S., 384, 386, 393.

And so where the Scottish Mortgage and Investment Company of New Mexico, "a private corporation organized under the laws of Great Britain," loaned money in New Mexico, through its agent there, and payments were made to this agent.

McBroom *vs.* Scottish, &c., 153 U. S., 318, 320.

The same principle is illustrated in the case of Savings and Loan Society *vs.* Multnomah (60 Feb. Rep.), affirmed in 169 U. S., 421.

In another case this court, following the supreme court of Alabama, held that "a loan or borrowing of money by or from a foreign corporation was a doing of business in that

State" and "an unlawful act," without complying with the laws of the State; and when it was urged that it was a Tennessee contract, like the Bedford case, and the Bedford case was expressly relied on, this court answered by saying, "We think there is a marked distinction. In the Bedford case the contract was legally entered into and was entitled to be enforced. In the case at bar the contract was made in violation of the statute of Alabama, and it cannot, therefore, claim the protection given to the contract in the other case."

Chattanooga Bldg. & Ln. Assn. *vs.* Denson, 189 U. S., 408.

And so the plaintiff in error here was doing business; was, through its agents, "committing acts" in furtherance of a transaction in violation of the laws and contrary to the public policy of Mississippi.

Section 2348 of the Code of 1892 prohibits not only stipulating for, but the receiving of a greater rate of interest than 10 per cent., and section 849 provides that "foreign corporations shall not do or commit any act in this State contrary to the laws or policy thereof," &c. Now, if a rate of 6 per cent. for interest and another 6 per cent. for premiums, making 12 per cent., is usury, then it is admitted that this amount was paid monthly in Meridian, Mississippi, to the local agents of the plaintiff in error, and was certainly a receiving of more than 10 per cent. in "this State." The supreme court of Mississippi had long previously decided, which decision was adopted by the legislature as one of the annotations under the section 2348 of the Code of 1892, that "the penalty on a corporation for usury is, a statute not expressly providing a different rule, the same as that imposed on natural persons" (Grand Gulf Bank *vs.* Archer, 8 Smed. & M., 16 Miss., 151).

And this statute is constitutional. It is illustrated by a case lately decided by this court, in which insurance brokers in New York had a branch in Massachusetts, and an agent

in Boston solicited insurance from a man there, and sent his authority to procure insurance to the head office in New York, who procured the insurance from the Lloyds in England, and they sent the policy to the Boston agent, who delivered it to the applicant. It was claimed that it was an English contract, and to punish it in Massachusetts was an unconstitutional interference with the liberty of contract and also with interstate commerce; but this court answered that a contract of insurance, though intimately connected with commerce, yet was not commerce (and much less would a building and loan contract be, which has no connection with commerce); and they further held that the transactions were committing acts, doing business unlawfully in Massachusetts, and subject to its penalties therefor.

Nutting *vs.* Massachusetts, 183 U. S., 553, 556–557.

The principle of that decision is exactly in point. While it denies the right of a State to prohibit one of its citizens from going out of the State and making contracts in another State, yet it sustains the right of a State to prohibit foreign corporations from coming into the State and either their officers or agents committing acts there contrary to its laws or public policy.

In another case, where a ticket was issued for the transportation of a passenger from Antwerp to New York, and contained provisions exempting the vessel from liability for loss of baggage, which was legal in Belgium, but not in the United States, and in a suit in a United States court for the loss of the baggage the law of Belgium and this provision in the ticket were relied on, this court held that neither as a matter of law or comity would a country enforce a contract contrary to its own laws or public policy. It was expressly provided in the face of the ticket that "all questions arising hereunder are to be settled according to the law of Belgium, with reference to which this contract is made;" and this was also relied on; but this court said: "It is true

as a general rule that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of the contracting parties can the public policy of a country be set at naught."

The *Kensington*, 183 U. S., 269–270.

The court said it made no difference that the point had not previously been decided, and in answer to the contention that the provision was simply a question of contract, and "no offense against morality was committed in making them," you said it is "the existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion."

The question of usury is one of local law.

Massachusetts Ben. Co. *vs.* Miller, 137 U. S., 689.

The land was situated in Mississippi and nearly all the actual transactions took place there, and the supreme court of Mississippi has decided that it was against the laws and public policy of that State, and you are bound by that decision. "It is a construction or application of the statute to the case in hand and is binding on us."

Gallup *vs.* Schmidt, 183 U. S., 300, 305.

The act need not be immoral, if it is against public policy. I take it that whatever is detrimental to the welfare of its citizens is contrary to the public policy of a State. It cannot be denied that the taking of an exorbitant interest or profit on the loan of money is detrimental to the general welfare, and especially if that interest or increment is carried beyond the confines of the State, as is the case when it is paid over to a foreign corporation.

I think this is demonstrable. If I take one dollar out of one of my pockets and put it in another I am neither richer

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nor poorer than I was before, and so if A and B, two citizens of the same State, trade with each other. If A lends B $100 at 10 per cent. interest, when B pays it to A it still remains in the State, and hence the State is as rich as it was before and is not injured; but if it is paid to a foreign corporation and taken to New York, then there is that much more money in New York and that much less in the State from which it was taken.

But even if a citizen of Mississippi loans money to another citizen at a greater rate of interest than he is able to pay, the latter will either lose all his property, if he has any, and, if he has not, he will be effectively prevented from accumulating any, and in his old age or in disease, when he is no longer able to work, will be thrown back as a pauper on the State to support and take care of. And, besides this, the man himself, while he is able to keep body and soul together by his labor, will be so pinched by necessity that he will never be able to extract his due and proper proportion of happiness out of this sphere of existence, and all because he has been robbed by the money-lender.

But you may say this is too harsh a term—that a robber takes from a man by force and against his will.

But suppose the victim is sick and in need of medicine. He is not able to buy it, and yet his life depends on getting it. You charge him 20 per cent. to lend him the necessary amount, and that is all he can make when he is well. He gets well and then has to set to work to pay this interest. In the meantime he gets sick again from overwork in trying to keep the interest paid. Having absorbed everything in trying to pay the interest, he is not able to get any more medicine and dies for want of it. The lender has thousands, and whether he got 5 per cent. or 20 per cent. is of not much consequence to him. He has more than he can find any chance to spend, anyway. The robber would say, "It is true I pointed a pistol at him, but he reached down in his pocket and handed me his pocket-book himself;" but the answer is

he did it as a matter of necessity, and you brought about that necessity; and so in the other case the sick man agrees to pay you the 20 per cent. as a matter of necessity, and you may say you are not to blame; but if you have been charging him more interest than was necessary for you and more than he was able to pay, you have succeeded in transferring all his property and earnings to yourself, and you have brought about the condition he is in. The only difference is that probably it took you a little longer to get him in the fix that he is compelled to give anything you ask than it did the robber. One is prompt robbery and the other is slow robbery, and I think the quick robbery is less agonizing and distressing, for the victim can go about making something else, while you keep on taking all he makes.

And it is to the interest of the State and for the general welfare to keep one class of citizens from pauperizing another class and throwing the expense of maintaining them on the body politic, and also to conduce as much as possible to the equal opportunities and happiness of all its people. It is to its interest thus to keep its own citizens from dealing unfairly one with another, and much more so to prevent foreign corporations from doing so, for, as I above tried to show, that is much more detrimental, in that it takes the money out of the State and tends directly to bring about hard times.

This is the principle that the protective tariff is founded on, viz., that it keeps the money in the country. The theory is that if we can keep our money at home and supply everything that is needed, that with our enormous productive capacity we are bound to increase rapidly in wealth and prosperity, and that part of it seems to be a fact. The difficulty is exactly the same as in charging too high a rate of interest. When you do that you inevitably create classes and oppress one part of the citizens for the aggrandizement of another part, and then it ceases to be for at least the *gen-*

eral welfare and becomes for the welfare of a class at the expense of another.

As to what is the proper profit so as not to be oppressive is a very difficult matter to decide, and hence must, as a general rule, be left to each State to determine for itself.

The general principle to be observed is that if the manufacturer takes a greater profit than the consumer is able to produce or spare, and the lender takes more interest than the borrower is able to make or bear, then they are both to that extent killing the goose that lays the golden egg, the golden egg representing the general welfare or the opportunity to preserve or better one's condition.

The taking of usury has always been considered to be more or less detrimental to the general welfare.

Even as early as B. C. 1491, as appears in Exodus, ch. 22, v. 25, and Leviticus, ch. 25, v. 36, 37, the Hebrews were forbidden to take usury from each other or from strangers. About B. C. 1451 they were again forbidden to take usury from each other, but were permitted to exact usury of others (Deuteronomy 23, v. 19, 20).

In Smith's Bible Dictionary, page 318, under the head of usury, he says that charging usury "was used as a means of ruining the Canaanites," and it must be admitted that there is nothing that will ruin a man sooner or more effectually than attempting to pay an exorbitant rate of interest.

About the year B. C. 712 it was supposed to be equally as disastrous to the lender as the borrower (Isaiah, ch. 24, v. 2).

In the year B. C. 700 it was classed with "unjust gain" (Proverbs, ch. 28, v. 8).

In the year B. C. 594 it was called one of the "abominations"—Ezekiel, ch. 18, v. 8, 13; and in ch. 22, v. 12, it is classed with "extortion."

About the year B. C. 445, according to the same authority, Dr. William Smith, they were forbidden to exact usury from any one, either Jew or Gentile, in the commandment "let us leave off this usury" (Nehemiah, ch. 5, v. 10).

The word usury does not seem to occur in the New Testament. Under the King James version it occurs twice—once in Matthew, ch. 25, v. 27, and once in Luke, ch. 19, v. 23—but in both instances it was a reprimand to the man with one talent for not improving it, for not putting his talent to the usurers, for not doing the best he could with whatever opportunities he had. This, however, appears to be a mistranslation, and in the place of the word "usury" the Revised Version has it "interest." It has at times under the English law been severely punished. It has in fact in many times and many countries been the cause of the severe prejudice against the Jews.

There is a point at which a just compensation for the use of money is both a benefit to the lender and borrower, and on the proper side of this line the lending and borrowing of money is a distinct benefit to commerce, in that it enables it to be easily, promptly, and successfully carried on. Circumstances change, and what is the proper line must and should be left to the State, to the people among whom the business is being transacted and who are familiar with all the surroundings.

I will now close this part of the brief and endeavor to show that the charge of 6 per cent. for interest and 6 per cent. for premiums was usury pure and simple, and that there was no risk or hazard to the lender or chance of gain to the borrower. The workings of these building and loan associations are very complicated, no doubt purposely so, and are very apt to confuse. When I was a youngster at school and college I had a little reputation as a mathematician, and I will now see if it will enable me to explain intelligently the scope, plan, and ultimate result of a loan from this association.

Under article 17 of the articles of association there was established an expense fund, and into this was paid "ten cents per share of the monthly dues paid on installment shares, twelve and one-half cents per share per month on

paid-up shares, fifteen cents per share per month on interest-bearing, paid-up shares, and transfer, withdrawal, and redemption fees."

Record, p. 35.

The full-paid shares were sold at 50 cents on the dollar, and interest-bearing, paid-up shares were sold at 70 cents on the dollar, and both these classes of shares "shall be liable for no further dues or assessments."

Record, p. 31, art. 8, secs. 3 and 4.

The interest-bearing shares were entitled to "interest at the rate of 6 per cent. per annum upon the purchase price" (*Ib.*).

On withdrawal the paid-up non-interest-bearing shares were entitled to interest from the earnings at the rate of 6 per cent. for the first three years and 7 per cent. thereafter.

Record, p. 34.

The main difference between the simple paid-up shares and the paid-up interest-bearing shares seems to be that the one received interest if earned and the other absolutely, and in case of a corporation with no individual liability, I don't see much difference, as on the theory on which the business was conducted, of charging borrowers 12 per cent. interest, there was very likely to be some earnings.

A borrower was required to have one share of stock of the face value of $100 for every $100 borrowed by him, and he was required to pay on this share 60 cents per month, and on each $100 of the loan he was required to pay 50 cents per month under the name of interest and 50 cents per month under the name of premiums. The 60-cent payments on the shares were called "dues." The three payments were thus classified as dues, interest, and premiums. I ask the court to keep this distinction in mind, as it will make my explanation simpler.

Rec., p. 32, art. 10, and p. 33, art. 12, sec. 2.

Different periods have been set for maturity in building and loan associations, but in this case it was fixed at eight years.

Record, p. 33, sec. 2.

Now, let us work out a transaction on this basis of eight years. Suppose a man wants to borrow $600. Before he can borrow the $600 the association must have the $600 to lend him. It goes out and sells two paid-up shares of the par value of $100 each for $50 each, and thus raises the money, selling twelve shares to raise the $600. It then lends this $600 to the borrower, but out of it he must pay all charges for fixing up the papers, and then pay the premium for six months in advance, so that he really does not get the full $600, but that much less the six months premiums, or $582.

Record, p. 33, sec. 2.

He now pays at the rate of 50 cents per $100 as interest and 50 cents per month as premiums, or at the rate of 12 per cent. per annum on the whole $600, although he only received $582. Besides, he pays the sum of 60 cents per share per month by way of dues.

Now, what becomes of this $1.60 per share per month?

Of the 60 cents "dues," nominally 10 cents is placed in the expense fund and the balance of 50 cents in the loan fund. For each paid-up share twelve and a half cents per month is also placed in this expense fund and fifteen cents for each share of paid-up interest-bearing stock. In the further calculation I will omit the 15-cent or interest-bearing shares, as the amount paid for them, $70, puts them about on an equality with the twelve and a half cent stock, and omitting them will save time and space. But neither of these two classes of shares were subject to any further dues or assessments.

When the purchaser buys and pays for his two paid-up shares at $50 each this $100 is loaned to the borrower, and hence there is no money on hand from the paid-up-share fund to pay the twelve and a half cents a share, such shares not being subject to any further dues or assessments, and hence of necessity it must be taken out of that part of the loan fund put there by the borrower. I suppose what is meant by each share of paid-up stock paying twelve and a half cents per month into the expense fund is that while the purchaser only pays $50 for the share, yet it is a $100 share, and at maturity he would otherwise be entitled to draw out the full $100; but as there has been twelve and a half cents per month, or $1.50 a year, or $12 for the eight years, charged on this share for dues in the expense fund, he would only be entitled to draw out his $50 paid in and the other $50 to make face value, less the $12 for dues, or $38, which, added to the $50 paid in, would be $88 to which he is nominally entitled.

Now the borrower, as I have above shown, is entitled to five-sixths of the amount paid in by him, with interest, as was allowed in the actual settlement in this case, at the rate of 5 per cent. On his $100 share he has paid in 60 cents a month, which is $7.20 a year, and $57.60 in the eight years. Of this $57.60, under the rules he is paid back five-sixths, which is $48, and as it was raised by continuous payments of 60 cents a month he is paid interest at the rate of 5 per cent. for the average time, or one-half of the eight years, which, of course, is four years. Interest at 5 per cent. for four years is 20 per cent., and interest on the $48 at 20 per cent. is $9.60, which added to the $48 makes $57.60, or the exact amount he paid in. If you take out one-sixth of a given amount you will have to add one-fifth of the remainder in order to make the remainder equal the original sum. One-fifth is 20 per cent., and hence it is easy to see that if you take out one-sixth of any given amount it will take eight years to replace it at

a rate of interest of 5 per cent., or 6⅔ years at a rate of 6 per cent., &c., the amount required being in each case one-fifth, or 20 per cent. The "maturity" seems to mean that time when the remainder left after deducting a certain sum for expenses or otherwise at a certain rate of interest will exactly reproduce the aggregate of the sums paid in. The effect of it is, then, that the borrower at the end of the eight years would, on his stock, get back exactly the amount that he had paid in, without a cent of interest—that is, for the privilege of being allowed to borrow a certain sum at the rate of 12 per cent. interest he, in addition, must furnish the lender another certain sum for eight years without interest. That is the actual result, and the legerdemain of saying that he will get back five-sixths of what he pays in, with an average interest of 5 or 6 per cent., is a mere play upon words. What he actually gets back at the end of eight years is what he actually paid in, without any interest. That disposes of the "dues," or 60 cents a month payments on account of shares.

Of the 6 per cent., or 50 cents a month, which he pays *eo nomine* as interest on each share, that goes to pay the buyer his 6 per cent. interest on the purchase price of his two shares at $50 each, or $100 for the two.

We have now paid the borrower back the money he paid in on account of dues, and the purchaser, or lender, his 6 per cent. interest, and that leaves only the 50 cents a month on each share paid as "premiums." Of this amount 10 cents goes into the expense fund, nominally under the necromantic allegation of 10 cents out of the 60 cents for "dues," but, wherever it actually comes from, it goes into that expense fund. As before said, the alleged purchaser, the man who furnished the $100 to lend the borrower, gets for his $100 two shares, and on these is paid into the expense fund 12½ cents each, or 25 cents for the two, and, as the buyer is liable to no further dues or assessments, this 25 cents must come out of the 50 cents a month paid in by the borrower as premiums. We have disposed of everything else, and hence

there is nothing else for it to come out of. Here is now, then, 10 cents and 25 cents, making 35 cents paid into the expense fund, all of which, perforce, must come out of the 50 cents a month paid in for premiums. That leaves 15 cents of the premium fund, which is $1.80 a year, or $14.40 for the eight years. The borrower pays back the principal of his loan, $100 per share, but, of course, this has to be paid back to the purchaser, who advanced it and is entitled under the articles to be repaid the "purchase price," with interest at the rate of 6 per cent. for the first three years and at the rate of 7 per cent. "thereafter."

Record, p. 34, art. 15, sec. 2.

Now on his $100 the purchaser after three years is entitled to interest at the rate of 7 per cent. We have already paid him the 6 per cent. that the borrower paid as interest on his loan. Hence the purchaser is only entitled to 1 per cent. more for five years, or the "thereafter" of the eight years, after the three years. One per cent. a year for five years makes 5 per cent., and 5 per cent. on $100 is $5. Take this $5 from the $14.40 and it leaves $9.60 to be disposed of. If it is distributed equally among the shares, then the lender has two shares and the borrower only one. Of the $9.60, then, the lender gets two-thirds, or $6.40, and the borrower one-third, or $3.20; but out of this $3.20 the borrower will have to pay a withdrawal fee of $1, which will leave him $2.20, or 55 cents a year for the average time, or four years, on the amount, $57.60, paid in by him for his stock, which is less than 1 per cent. interest, and this if everything goes through without a hitch; but of course if there are any hitches, or lawsuits, or extra expenses, he will not get even this 55 cents. It is the most he can expect. The small amount of fines by the time they are divided up among all the lenders and borrowers would be a very insignificant thing at best, and besides they would be more than likely to be consumed in expenses.

In order to get even this 1 per cent. the money would all have to be kept loaned out every minute of the time. Article 15 of the articles of association (Record, p. 34) provides that in case any money cannot be loaned, it "may be invested in such securities as the laws of New York permit for the investment of savings banks' deposits." But this court can be said to know almost judicially that such first-class investments would not yield over an income of 6 per cent., and this would have to be paid to the man who originally furnished the money by buying the paid-up shares, and instead of being any benefit would still be a distinct loss to the borrower, and it would only lessen his loss. In order to keep up the average the money must all be kept out at 12 per cent., the amount he has to pay, instead of 6 per cent.

There is practically no hazard to justify an unusual rate of interest.

Under article 12, section 4, of the articles of association, the borrower has to furnish real-estate security with a clear, unencumbered title, and the loan must "not exceed 60 per centum of the cash value of such security," and this is the proportion that banks and loan companies have found by experience to be practically safe and the kind of security they are all anxious to lend their money out on at the very lowest rate of interest, and hence there is, as a legal proposition, no hazard whatever, and, as I have shown, there is no chance for the borrower to make any, even the lowest, rate of interest *on his investment*—not even as much as the lowest-rate Government bonds would yield. He takes the stock because he is forced to in order to get the loan, and not because he wants the stock. It is discriminated against all the way through, and is no inducement whatever. It will be noticed that the purchasers of paid-up and of paid-up interest-bearing shares are subject to no further dues or assessments, and hence that, under cover of multitudinous language to obscure and conceal the true results, the borrower has to

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pay every single bit of the expenses of the association. Nobody else pays a single cent towards it. Burden after burden is piled upon him until he comes forth, like the "old man of the sea," bowed down with the weight of the enormous burdens. He has ministered to everybody and kept everybody's feet warm, and gets nothing for it in the final wind-up.

His only consolation is that when he appears at the judgment bar St. Peter will tell him that, though his sins were as the sands upon the seashore for number and as the cloud-capped mountains for size, he has suffered enough, and to enter at once into the joys of his Lord.

I think the correct view is that man, as a member of a complex society having rights and duties as well as he, has no scriptural, moral, or legal right to live for himself alone. He may not be exactly limited to the prerogatives of the Autocrat of the Breakfast Table, to depend on the voluntary contributions of his neighbors for his subsistence, while creating a little sunshine for their comfort and happiness, on the one hand, but neither is he entitled, on the other hand, to assume the prerogatives of the Autocrat of all the Russias or to invoke in free America the doctrine that the king can do no wrong, in reference to the liberty of contract or otherwise.

I think we can safely say that as a result of the foregoing views, while as a general rule a man has an inalienable right to the liberty of contract and to do with his own as seems best to him, yet as a recompense to some extent for living in society and being protected by its laws and its members, the above rule must be modified to the extent that he must surrender something for these privileges, and that as a partial contribution to the general good his liberty of contract and right to dispose of his own as he pleases must be with the qualification that other members of the com-

munity also have some rights, and that therefore his rights are only comparative and are not unlimited, and that if he is allowed a fair remuneration in his contracts and in the disposition of his property, that is all he has any moral or strictly legal right to claim, and he has neither of these rights to go beyond that and injure and ride rough-shod over his neighbors, whose stout hearts and brawny arms are perhaps the only bulwark he has for any protection at all. He is perhaps forgetful or unmindful of the fact that but for the protection of this class he would be unable to own or hold anything; and, as a matter of fact, instead of surrendering any rights he has vastly more rights and power by reason of the very protection which in his puffed up *ego* he is seeking to ignore. In conserving the general welfare the state is not confined to the interests of one man or one set of men, but must look to the whole as the body politic, and has a right to so regulate the business of one or a few as to conduce to the interests of all.

This court has decided that where a person or corporation comes into a State and establishes an agency and this agent lends out the money of his principal and fixes the papers and collects the payments it is such a doing of business and so localizes it that it is subject to the taxing laws of the State.

City of New Orleans *vs.* Stemple, 175 U. S., 309.
Bristol *vs.* Washington County, 177 U. S., 133.
State Board, &c., *vs.* Comptior Nat. d'Escompte, 191 U. S., 388; 60 Fed. Rep., 31; affirmed in 169 U. S., 421.
88 Fed. Rep., 578; 96 Fed. Rep., 578.

And if such acts subject the business to taxation it is difficult to see why they should not subject it to the usury laws and other laws and the public policy of the State.

For other more or less analogous cases on the subject of usury by building and loan associations, I refer the court to

Nat. Mut. Bldg. & L'n Ass'n of N. Y. *vs.* Burch, 82 N. W., 837 (Mich.).

Phœnix Bldg. & L'n Ass'n *vs.* Stringham, 81 Ill. App. 48 (Ill.).

Douglas *vs.* Cavanaugh, 90 Fed. R., 373 (Tenn.).

McIlwaine *vs.* Ellington, 111 Fed. R., 578 (N. C.).

Interstate, &c., *vs.* Badgley, 115 Fed. R., 390 (Ore.).

South'n, &c., *vs.* Johnson, 111 Fed. R., 657 (Va.).

Coltraine *vs.* Baltimore, &c., 110 Fed. R., 293 (Md.).

Sokoloski *vs.* N. S. Bldg., &c., 77 Miss.

Fid., &c., *vs.* Shea, 55 Pac. R., 1022 (Idaho).

Nat., &c., *vs.* Keeny, 77 N. W. R., 442 (Neb.).

This is the same building and loan association as here, and so is each one commencing with "Nat., &c."

Wilcoxen *vs.* Smith, 78 N. W., 217 (Iowa).

See especially Savings, &c., *vs.* Strine, 78 N. W., 377 (Neb.).

Hale *vs.* Stenger, 61 Pac. R., 156 (Wash.).

Pac., &c., *vs.* Green, 114 Fed. R., 412.

For the list of Mississippi cases on this subject I refer to the last page of the brief of associate counsel, page 16, and also for some decisions from other States.

I also refer to the brief of the defendant in error, who is an attorney and filed a brief in the State supreme court.

See this case in 80 Miss., pp. 415–416.

For an exhaustive collection of the authorities, I refer to the various opinions of the supreme court of Mississippi in the different cases of this character as listed by associate counsel on said last page of his brief.

And as a ready reference sheet to cases applicable to various phases of this case, I refer as follows:

Bound by interpretation by State supreme court of its laws.

N. Y. Life Ins. Co. *vs.* Cravens, 178 U. S., 395.

Questions of fact or of general or local law not reviewable on writs of error from State courts.

Thayer *vs.* Spratt, 189 U. S., 346.
Avery *vs.* Popper, 179 U. S., 305, 315.
E. Bldg. & L'n Ass'n *vs.* Ebaugh, 185 U. S., 120–121.

Full faith and credit not denied where statute of another State merely construed and its validity not questioned.

Finney *vs.* Guy, 189 U. S., 335.
Andrews *vs.* Andrews, 188 U. S., 14.
Johnson *vs.* N. Y. Life Ins. Co., 187 U. S., 491.
E. Bldg. & L'n Ass'n *vs.* Williamson, 189 U. S., 125–127.

Impairing a contract is only by subsequent laws and not by erroneous decisions of the courts.

Weber *vs.* Rogan, 188 U. S., 10.
159 U. S., 103; 163 U. S., 278; 172 U. S., 116, 127.

There must be a *bona fide* Federal question involved; a mere allegation cannot create one where none in fact exists.

Sawyer *vs.* Piper, 189 U. S., 154.
Equitable L'n Ass'n Soc. *vs.* Brown, 187 U. S., 311.

On the above and foregoing reasoning and authorities I ask that this case be either dismissed or affirmed.

Respectfully submitted.

R. C. Beckett,
Of Counsel for Defendant in Error, F. V. Brahan.